

CHAPTER 5

ARTICLE 44 — PRISON RAPE ELIMINATION POLICY

Effective January 19, 2006

54040.1 Policy

The California Department of Corrections and Rehabilitation (CDCR) is committed to providing a safe, humane, secure environment, free from sexual misconduct. This will be accomplished by maintaining a program to address education/prevention, detection, response, investigation, and tracking of sexual misconduct and to address successful community re-entry of the victim. CDCR shall maintain a zero tolerance for sexual misconduct in its institutions, community correctional facilities, conservation camps and for all offenders under its jurisdiction. All sexual misconduct is strictly prohibited. This policy applies to all offenders and persons employed by the CDCR, including volunteers and independent contractors, assigned to an institution, community correctional facility, conservation camp, or parole.

Retaliatory measures against employees or offenders who report incidents of sexual abuse shall not be tolerated and shall result in disciplinary action and/or criminal prosecution. Retaliatory measures include, but are not limited to, coercion, threats of punishment, or any other activities intended to discourage or prevent an employee or offender from reporting the sexual abuse.

54040.2 Purpose

The purpose of this policy is to ensure compliance with Public Law 108-79, the Prison Rape Elimination Act of 2003 (PREA), and California Assembly Bill 550 (Chapter 303, Statutes of 2005), the Sexual Abuse in Detention Elimination Act. It will provide guidelines for the prevention, detection, response, investigation, and tracking of offender sexual assaults and sexual misconduct between offenders and/or staff and offenders. A further purpose of this policy is to provide guidelines for the successful community re-entry of sexual assault/misconduct victims.

Lastly, this policy informs staff of their responsibility and liability as specified in the law.

54040.3 Definitions

Aggressor

An offender or staff member who attempts to commit, or commits a sexual assault and/or coercion of an offender that results in either consensual or non-consensual sexual contact.

Coercion

A threat, however communicated, to commit an offense; to inflict bodily injury in the future on the person threatened or another, to accuse a person of any offense, to harm the credit or business reputation of any person, to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

“Need to Know” basis

When the information is relevant and necessary in the ordinary performance of that staff person’s official duties.

Non-consensual

Not giving permission for or consent to an action being taken by another person.

Offender

Any inmate, ward, parolee or other person currently under the jurisdiction of the CDCR.

Rape

Refer to PC Section 261.

Sexual Assault

Any contact by the use of force, threatened use of force or coercion, between the sex organ of one person and the sex organ, mouth, hand or anus of another person, or any intrusion of any part of the body of one person, or of any object, substance, instrument or device, into the sex organ, mouth, or anus of another person.

Sexual Assault Response Team

A coordinated interdisciplinary team of law enforcement, prosecution, medical, and advocacy experts collaborating to meet the forensic needs of the criminal justice system, and the medical and emotional needs of the sexual assault victim.

In CDCR, one adult institution has an on-site SART, the California Correctional Institute (CCI); all others will utilize the resources available via contract at the local community hospital. The program at CCI will be considered a pilot and will be reviewed after one year for best practices and lessons learned.

Sexual Contact

Any touching of an erogenous zone of another, including the thigh, genitals, buttock, pubic region, or breast, for the purpose of sexual gratification.

Sexual Misconduct

Any threatened, coerced, attempted, or completed sexual assault or non-consensual sexual conduct between offenders.

As it relates to employees, any sexual behavior by a departmental employee directed toward an offender, as defined in California Code of Regulations (CCR) Section 3401.5 and Penal Code (PC) Section 289.6. The legal concept of “consent” does not exist between departmental employees and offenders; any sexual behavior between them constitutes sexual misconduct and shall subject the employee to disciplinary action and/or to prosecution under the law.

Staff or Employee

Any person employed by the CDCR, including volunteers and independent contractors, assigned to an institution, community correctional facility, conservation camp, parole or headquarters.

Victim

For purposes of this policy, an offender who is sexually assaulted or is subjected to non-consensual sexual contact by another offender. In addition, an offender who is sexually assaulted or is subjected to sexual misconduct by a staff member.

Victim Advocate

An individual typically employed by a Rape Crisis Center whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by an approved counseling center. The Victim Advocate will be summoned to assist the alleged victim of an in-custody sexual assault. In cases where an outside Victim Advocate is not available, a designated employee who has completed the required training will be called upon to provide support to a victim of in-custody sexual assault. (Refer to Evidence Code 1035.2)

Victim Support Person

Any person of the alleged victim’s choosing which could include another offender, personal friend or family member.

54040.4 Education and Prevention

Employee Training

All employees, including volunteers and contractors, shall receive instruction related to the prevention, detection, response and investigation of offender sexual assault. This training class will be conducted during new employee orientation, annual block training, and included in the curriculum of the Correctional Training Academy.

Specialized training shall be offered periodically through the local Rape Crisis Center to employees designated as victims' advocates. This training is a minimum of 40 hours instruction time. Only employees who voluntarily agree to act as a victim advocate shall be utilized in that capacity. Staff who volunteer will be subjected to background clearance to ensure no prior history of violence.

All employees who are assigned to investigate sexual exploitation and/or assault will receive specialized training per PC Section 13516 (c). The curriculum utilized in the class must be OTPD approved.

Additional and specialized training is encouraged and should be offered to appropriate employees at individual institutions, facilities and parole offices, or through approved off-site or on-site training. This includes training provided by outside agencies.

Offender Education

Verbal and written information shall be provided to offenders which will address:

- Prevention/Intervention.
- Reporting.
- Treatment and Counseling.

Offender orientation on PREA will be provided to the offender population via a multi-media presentation on a quarterly basis in both English and Spanish.

Approved PREA posters which contain departmental policy and the sexual assault reporting telephone numbers shall be posted in designated locations throughout the facility and parole offices. At a minimum, these areas shall include all housing units, medical clinics, law libraries, visiting rooms, program offices, and offender work areas.

The PREA Brochure entitled "Sexual Assault Awareness" will be distributed during initial processing in reception center (RC) institutions. The booklet entitled "Sexual Abuse/Assault – Prevention and Intervention" shall be distributed to all offenders during their initial Unit Classification Committee (UCC) hearing at their assigned institution and will be available through their correctional counselor.

Appropriate provisions shall be made to ensure effective communication for offenders not fluent in English, those with low literacy levels and persons with disabilities.

Institutions may consider the use of offender peer educators to enhance the offender population's knowledge and understanding of PREA and sexually transmitted diseases.

54040.5 Detection

CDCR staff have a responsibility to protect the offenders in their custody. Every employee is responsible for reporting immediately and confidentially to the appropriate supervisor any information that indicates an offender is being, or has been, sexually assaulted. In addition to this reporting, staff have a responsibility to assist the offender and refer him/her to medical/mental health for evaluation. Staff shall ensure the reporting of information is done in a confidential manner.

An offender may report sexual misconduct that occurs under the jurisdiction of the CDCR, to any employee. If the employee who receives the report is a non-custody employee, he/she shall immediately notify his/her supervisor and, if in an institution, report the information to the Watch Commander.

Employees are reminded that victims of sexual assault/rape may be seriously traumatized both physically and/or mentally. Staff are expected to be sensitive to the offender during their interactions with him/her.

Screening for Appropriate Placement

The process of review and evaluation for single cell status shall be initiated during RC processing as part of initial screening. This process will include completion of the Initial Housing Review form, which includes questions related to sexual assault and victimization. Upon the offender's arrival at his/her assigned institution, this information will again be assessed and updated as necessary.

The offender shall be referred to a classification committee for determination of single cell status in accordance with CCR Section 3377.1(c), based on documented evidence that the offender may not be safely housed in a double cell or dormitory situation. An offender's need for single cell status shall be reviewed as part of initial/annual classification, or any time an offender is referred for transfer or placement consideration.

Based on information that the offender has been a victim of sexual assault, the custody supervisor conducting the initial screening shall discuss housing alternatives with the offender, in a private location. The custody supervisor shall not automatically place the offender into administrative segregation. Consideration shall be given to housing this offender with another offender who has compatible housing needs. If single cell status is appropriate, the custody supervisor may designate the offender for single cell housing pending a classification review.

Per the Department's Mental Health Services Delivery System (MHSDS), all offenders shall receive a mental health screening within the first seven days of their arrival at an institution.

Any staff member with significant concern that an offender may be subject to sexual victimization shall immediately notify a custody supervisor who will refer that offender for a mental health evaluation. This referral will be completed using the Staff Referral for Mental Health Services form, and should include enough information to allow the medical/mental health staff who is screening the referral to determine if the need is urgent (as soon as possible within 4 hours), emergent (within 24 hours), or routine.

54040.5.1 Notification via Inmate Appeals Process

Any employee receiving notice of alleged staff sexual misconduct via a completed Inmate/Parolee Appeal form shall immediately hand-carry the document to the institution head, unit supervisor or highest-ranking official on duty as outlined in CCR, Title 15, Section 3401.5.

54040.6 Response

It is the expectation of the CDCR that all staff shall maintain professional behavior when interacting with an alleged victim of sexual assault, and display sensitivity to the potential emotional impact of the situation. All employees are reminded that this is a very serious situation. Incident-specific information shall be treated as confidential, and disclosure made only to staff who have a "need to know" and to persons and entities as permitted or required by law.

Initial Contact

Upon the initial contact with staff, that staff member will take the alleged victim to a private secure location. The staff member will use the Initial Contact Checklist to assist the alleged victim.

The staff member shall make every effort to ensure the victim does not:

- Shower;
- Remove clothing without medical supervision;
- Use the restroom facilities;
- Consume any liquids.

When an allegation of sexual abuse against a minor is filed within an adult facility, it will be the responsibility of the Watch Commander to contact Child Protective Services.

54040.6.1 Custody Supervisor Responsibilities

The custody supervisor has significant responsibility in this policy, and a Custody Supervisor Responsibilities check list has been developed to assist with those duties.

If the victim alleges he/she was involved with or assaulted by staff, the Investigative Services Unit (ISU) will be immediately notified via the Watch Commander. The ISU staff shall immediately notify the Office of Internal Affairs (OIA) and the Warden or designee. If this occurs outside of normal business hours, the Watch Commander will notify the Administrative Officer of the Day (AOD), who will notify and dispatch ISU staff. The ISU or the AOD will then notify the OIA.

If a parolee reports sexual assault by another parolee, local law enforcement will be contacted. If a parolee reports sexual involvement with or assault by staff, the staff to whom the report was made will contact their supervisor. The parole supervisor will forward the information through the chain of command to their Regional Headquarters. Parole Regional Headquarters will immediately notify Office of Internal Affairs.

The custody supervisor must tell the victim that his/her name will become a matter of public record unless he/she requests that it not become a matter of public record, per PC Section 293 (a). The victim should be provided the Victim of Sex Crimes form to complete to either request or waive confidentiality of his/her name. If the victim chooses to have his/her name remain confidential, any written report concerning these offenses must indicate that the victim requested confidentiality of his/her name per PC Section 293(a). The victim's name and address may not be released except to specified persons or as authorized by law if the victim has requested confidentiality.

The custody supervisor shall assign a custody escort to the victim who shall remain with the victim for the entire sexual assault exam process, whenever possible. Gender preference should be considered when assigning a custody escort to the victim. The custody escort will ensure effective communication (i.e., complexity of the issues, language barriers, and literacy).

The Watch Commander shall initiate the Notifications Checklist.

At the time the victim is sent to the outside hospital or on-site Sexual Assault Response Team (SART) location, the Watch Commander is required to contact the Rape Crisis Center to request a Victim Sexual Assault Advocate be dispatched to the hospital. If one is not available, trained staff from the facility will be dispatched or called in to act as the Victim Sexual Assault Advocate.

Upon the victim's return to the institution Triage and Treatment Area (TTA) or designated medical location, the custody supervisor will arrange housing for the victim. All housing options should be considered, including input from the victim regarding his/her

housing preference, a bed move, a transfer to a sister institution and safety concerns. Consideration should also be given to housing the victim with another offender with compatible housing needs.

54040.6.2 Medical Services Responsibilities

Medical staff will conduct an initial assessment to determine if life threatening injuries exist and will treat those as required. In life threatening situations, response may include the need to request emergency transportation (i.e., ambulance), in which case standard medical protocols shall be followed. When the call is made to request the ambulance, it is critical to inform the dispatcher that the injured offender is the victim of sexual assault. Once the victim has been stabilized, a Medical Checklist shall be initiated.

In cases where no life threatening situation exists, the assigned Registered Nurse (RN) will initiate the Medical Checklist to ensure a victim support person is offered, and will determine if the victim has issues to be addressed such as difficulty understanding the situation, language barriers, or physical limitations, and ensure they are addressed through the establishment of effective communication per departmental policy.

The assigned RN will initiate the Request for Authorization of Temporary Removal for Medical Treatment form and have it hand-carried to the Watch Office to expedite the transportation process. All staff in the TTA will maintain physical separation and visual separation (whenever possible) between the victim and suspect(s).

The assigned RN will assist the custody escort in maintaining intact any physical evidence which may be found on the victim's person or clothing.

Follow-up testing for sexually transmitted infections/diseases and HIV will be offered as clinically indicated and will be the responsibility of the institution's medical department.

54040.6.3 Transportation Responsibilities

The transportation sergeant or designated sergeant shall maintain Sexual Assault Transportation Kits in a plastic storage bin. This kit will consist of:

- 1 clean jumpsuit
- 2 pieces of "examination table" type paper (approx 18" x 36" each)
- 2 Evidence Collection Envelopes
- 2 Evidence Collection Paper Bags
- 2 pairs of latex gloves and other required personal protective equipment (PPE)

The transportation officer will follow the Transportation Checklist for specific requirements related to the transportation of Sexual Assault victims and suspects.

54040.7 Forensic Medical Examination

The victim will be taken to the designated outside hospital, or on-site SART location, for completion of the forensic exam. The Sexual Assault Nurse Examiner (SANE) shall provide the required Forensic Medical Examination, per the Office of Emergency Services, as well as the appropriate Forensic Medical Report: Acute (<72 hours) Adult/Adolescent Sexual Assault Examination, the Forensic Medical Report: Non-Acute (>72 hours) Child/Adolescent Sexual Abuse Examination, or the Forensic Medical Report: Sexual Assault Suspect Examination. These examinations will consist of an explanation of the process, the offender's signature on consent forms (some offenders will require assistance to explain the consent forms prior to signing them), discussion of the incident and when/how it occurred, and a detailed physical examination that will include evidence collection and photographs. As required in AB 550, immediate HIV/AIDS

prophylactic measures will be provided. In addition, information regarding sexually transmitted infections, HIV and pregnancy options will be discussed with the victim and/or suspect. Testing for sexually transmitted infections, HIV and pregnancy (if appropriate) will be offered.

54040.8 Return to Triage and Treatment Area/Receiving &Release

Upon the return of the victim from the outside hospital or on-site SART location, medical clearance will be required prior to determination of appropriate housing for the victim. This medical clearance will be documented on an Emergency Room flow sheet or an Interdisciplinary Progress Note. The on-duty RN will also complete a request for an urgent Suicide Risk Assessment (SRA). Mental Health staff will evaluate the victim within four hours of referral. Until that time, the offender shall be placed under constant and direct supervision to ensure he/she does not attempt to hurt him/herself or someone else.

Mental Health Responsibilities:

All victims of a sexual assault shall be referred for an urgent SRA upon their return to the institution. The SRA must be completed by a qualified and trained staff member (which may include trained nursing staff). The SRA shall be conducted as soon as possible, but no more than four hours after referral, and shall include a face-to-face evaluation of the victim in a confidential setting. The victim shall be placed under constant and direct observation until the SRA is completed. If the SRA is conducted by a staff member who is not a mental health clinician, the staff member shall refer the victim for an urgent mental health evaluation if the SRA indicated increased suicide risk. All victims of sexual assault/rape shall be referred for a routine Mental Health Evaluation regardless of the outcome of the SRA.

The mental health clinician completing the routine Mental Health Evaluation shall ensure that the victim receives services as outlined in the MHSDS Program Guide, which includes criteria for inclusion in the MHSDS program based on qualifying diagnoses or medical necessity. Any stressors related to the reported sexual assault (e.g., safety/security issues or fear of retaliation) shall be documented in the Unit Health Record and considered in the decision regarding the victim's need for mental health services. Any victim who requests to be included in the MHSDS and be provided mental health services related to a reported sexual assault shall be provided individual and/or group therapy, and, if appropriate, referral to a psychiatrist for medication evaluation. If appropriate, the victim shall be given educational materials to provide information related to the medical and mental health conditions which may result after a sexual assault. Victims shall be monitored for suicidal impulses, post traumatic stress disorder, depression, and other mental health consequences.

Specific responsibilities of mental health staff shall be consistent with statewide Inmate Medical Services Policies and Procedures supplemented by local operating policies and procedures.

Suspect Processing (Offender on Offender):

All staff will ensure that there is no physical, verbal or visual contact between the victim and suspect, when possible. The suspect will be escorted to the TTA or designated medical location for medical screening and then to the on-site SART location or outside hospital for the forensic examination. The suspect must consent to the forensic examination or staff will take steps necessary to obtain a search warrant. Due to a suspect's refusal to be tested, it may become necessary to obtain a search warrant. The custody supervisor will contact ISU, the local district attorney's office or the OIA for assistance in writing one. Steps identified above for collection of evidence, transportation, and physical examination of the alleged victim shall be the same for the suspect.

Upon completion of the forensic medical examination, the suspect will be re-housed in the Administrative Segregation Unit (ASU). The custody supervisor shall complete the requisite forms for ASU placement.

ISU staff will provide a Miranda warning and interview the suspect to obtain his/her account of the incident.

Suspect Processing (Staff on Offender)

The OIA will be responsible for all phases of the investigation if the allegations are against an employee. Please refer to the Institution Operations Procedure for Staff Sexual Misconduct for the process to follow. Immediate efforts shall be made to eliminate contact between the victim and the staff member. The Warden or designee shall determine if the employee should be placed on administrative time off consistent with departmental policy during the course of the investigation.

54040.9 Investigation

All reports of sexual misconduct shall be investigated and the findings documented in writing. Sexual assaults and attempted sexual assaults between two offenders shall be investigated by staff from the ISU. The ISU Lieutenant will be responsible for completion of the investigation and will follow standard investigative procedures per institutional procedures. Reports alleging staff on offender sexual assault incidents shall be immediately referred to the OIA for investigation. Criminal investigations shall be referred to the District Attorney's Office.

Pursuant to PC Section 293(a) and Government Code Section 6254, the Victims of Sex Crimes form must be attached to all criminal reports relating to PC Sections 220, 261, 261.5, 262, 264, 264.1, 273(a), 273(d), 273.5, 286, 288, 288(a), 289.5, 422.6, 422.7, 422.75, and 646.9.

Crime Scene Preservation

The custody supervisor shall ensure that a perimeter has been established and an officer has been posted to keep persons out of the crime scene area. The custody supervisor shall ensure the assigned officer(s) maintain a chronological log of all persons entering the crime scene area and their purpose for entering the crime scene area. ISU staff and/or trained personnel shall process the crime scene, collect and secure evidence, including the rape kit examination. ISU staff shall photograph/videotape the crime scene and evidence collected, make a diagram of the crime scene, and collect/package all evidence.

Evidence

Care must be taken to ensure that any potential evidence is identified, preserved and collected. Examples of evidence include any clothing worn by the victim and suspect, hair or clothing fibers, dried or moist secretions, semen, blood or saliva stains, stained articles of clothing, blankets, or other foreign materials on the body of the victim or suspect, fingernail scrapings, and any other trace evidence.

Based on when/where the incident occurred, a designated evidence officer will be requested to collect evidence that may be destroyed if not preserved. The designated evidence officer and any other staff member who collects evidence will process it according to institutional procedure.

All DNA related evidence taken from the body of the victim or suspect (i.e., fingernail scrapings, body fluid, hair, etc) must be collected by the SANE (as previously described, this individual is located at the SART location) in accordance with State of California, Office of Emergency Services Reporting Instructions. The clothing that the victim wore at the time he/she reported the sexual assault will also be collected by the SANE. All other evidence such as clothing (from his/her bed area) and bedding will

be collected per institutional procedure.

Once the SART has completed its process with the evidence, it will be returned to the custody escort to transport back to the institution where it will be secured in an evidence locker and logged appropriately.

54040.9.1 Investigation of Sexual Assaults – more than 72 hours post incident

If the alleged sexual assault is reported or discovered more than 72 hours after the incident, in addition to the applicable provisions discussed above, the custody supervisor shall secure the alleged crime scene (if feasible) and place the alleged suspect (if he/she can be identified) into an ASU. The victim should be questioned using the Post Sexual Assault Information form regarding the specific time and location of the assault. The SART nurse shall be contacted to make a determination as to whether the victim is to be taken for a forensic examination. In addition, the victim should be asked if he/she retained any evidence of the assault (i.e., soiled clothing/bedding, etc.). If so, these items shall be gathered by the ISU evidence officer and processed per the institutional evidence collection procedures. Medical staff shall conduct an examination of the victim and alleged suspect to determine the presence or absence of physical trauma, and perform follow-up testing for sexually transmitted diseases and pregnancy testing, as appropriate. Medical staff shall also refer the victim to Mental Health for evaluation/counseling.

54040.10 Classification Process

In cases of alleged sexual assaults, a determination shall be made for all victim(s) and suspects(s) if placement in an ASU is warranted, for reasons outlined in CCR Section 3335. Following ASU placement, an administrative review shall occur in accordance with CCR Section 3337.

54040.11 Disciplinary Process

Upon completion of the investigative process, the existing disciplinary process, which includes referral for criminal prosecution and classification determinations, shall be followed.

If the allegation of sexual misconduct warrants a disciplinary/criminal charge, a Rules Violation Report and/or an Incident Report shall be initiated. The offender who is charged will be entitled to all provisions of CCR Section 3320 regarding hearing procedures and time limitations and CCR Section 3316, referral for criminal prosecution.

Determinate Security Housing Unit (SHU) term

For those offenders who have a determinate SHU term imposed for a sexual misconduct offense, the need for an indeterminate SHU term shall be considered at the Pre-Minimum Eligible Release Date Institution Classification Committee (ICC) if the offender has a history of multiple sexual misconduct offenses.

54040.11.1 Alleged Victim – False Allegations

Following the investigation into the sexual misconduct allegations, if it is determined that the allegations are false, the offender making the allegations may be subject to disciplinary action. A charge of “making a false report of a crime” a Division “E” offense, is appropriate if evidence discovered during the investigation would support that charge. A classification committee will review this information for appropriate housing and enemy concerns.

54040.12 Community Re-entry

Into the Institution

Guidelines for allowing outside organizations and service agencies to offer resources to victims of in-custody sexual assault/rape are currently being developed.

Mental Health Services shall be provided as directed under the Mental Health Responsibility section above.

Consideration during medical treatment (including counseling) must be given to:

- Sexually Transmitted Disease (STD) Conversion;
- Presence of Hepatitis B and/or C;
- HIV Testing;
- Pregnancy options, if appropriate.

Consideration during ICC must be given to:

- Completion of Departmental Disciplinary Process;
- Yard assignment while in ASU;
- Single or double cell status;
- Referral to the District Attorney for Criminal Prosecution;
- Housing including a consideration of alternate General Population Facilities, Sensitive Needs Yard placement, Out-of-State placement (requires Departmental Review Board (DRB) approval) or Indeterminate SHU (DRB approval).

In the Community

The victim may be referred to the Parolee Out-Patient Clinic, local mental health agencies and Crisis Intervention Centers, as the need arises.

54040.13 Tracking – Data Collection and Monitoring

The ISU Lieutenant or the supervising parole investigator shall report investigations into allegations of sexual misconduct on their monthly reports, including whether the perpetrator was a staff member or offender, disposition or current status. This information shall also be provided (via copy of the Incident Report) to the Offender Information Systems Branch (OISB) for compilation and tracking.

The OIA shall maintain records of investigations into allegations of staff/offender sexual misconduct, and will report by case number, the type of sexual misconduct, subcategory (male staff with female offender, female staff with male offender, etc.); whether the allegations were sustained; and whether a DA referral was made.

All case records associated with such reports including incident reports, investigation reports, offender information, case disposition, medical and counseling evaluation findings, recommendations for post-release treatment and/or counseling shall be retained in accordance with the CDCR Records Retention Schedule.

54040.14 Victim Advocate and Support Person

Victims of the crimes listed below have the right to a victim advocate and victim support person for both the medical examination and the investigatory interview:

- PC Section 261 Rape
- PC Section 261.5 Unlawful sexual intercourse with person under 18
- PC Section 262 Rape of spouse
- PC Section 286 Sodomy
- PC Section 288a Oral copulation
- PC Section 289 Forcible acts of sexual penetration

Advocate and support person for Medical Examination

In incidents where an offender has alleged sexual assault, the watch commander or designee shall immediately notify the local Rape Crisis Center whenever a victim of a sexual assault, as

specified above, is treated at the local SART location and/or transported to an outside hospital for any forensic examination.

Per PC Section 264.2, the victim has the right to have a victim advocate present and a victim support person of the victim's choosing at the examination. In most cases, the victim advocate will be from the local rape crisis center. The victim support person may be excluded from the examination if the watch commander/designee or medical provider determines that the presence of the victim support person would be detrimental to the purpose of the examination or poses a threat to the safety and security of the institution or outside hospital. If a victim support person is excluded, the watch commander/designee or medical provider who made the decision shall document the reason (i.e., if time for the support person to attend would result in a significant delay and/or the person requested would present a risk to the safety/security of the institution).

Advocate and support person for Investigatory Process

Per PC Section 679.04, victims of the crimes listed above, have the right to have a victim advocate and a victim support person of the victim's choosing present at any interview by law enforcement, the district attorney, or defense attorneys.

If the investigator or the district attorney determines that the presence of the victim support person would be detrimental to the interview, the victim support person may be excluded from the interview. The victim must be notified verbally or in writing of this right by the attending investigator or the district attorney prior to the interview. Reasons for exclusion of the victim support person are the same as identified above in the medical examination process.

54040.15 Referral of Completed Cases for Independent Review

Upon completion of the investigations and disposition of the involved offenders, each sexual assault case shall be forwarded to the Office of the Inspector General, Bureau of Independent Review and the Sexual Abuse in Detention Elimination Ombudsperson, for possible review.

54040.16 Revisions

The Agency Secretary shall be responsible for ensuring that the contents of this article are kept current and accurate.

54040.17 References

Public Law 108-79, Prison Rape Elimination Act.

California Assembly Bill 550 (Chapter 303, Statutes of 2005), Sexual Abuse in Detention Elimination Act.

Evidence Code 1035.2.

PC §§ 220, 261, 261.5, 262, 264, 264.1, 264.2, 273(a), 273(d), 273.5, 286, 288, 288(a), 289, 289.5, 289.6, 293(a), 422.6, 422.7, 422.75, 646.9, 646.9, 679.04.

CCR §§ 3316, 3335, 3337, 3377.1(c), 3401.5.

GC § 6254.